

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF WISCONSIN**

In re:

Case No. 11-20059-svk

ARCHDIOCESE OF MILWAUKEE,

Chapter 11

Debtor.

Hon. Susan V. Kelley

**RESPONSE OF THE DEBTOR TO THE OFFICIAL COMMITTEE OF UNSECURED
CREDITORS' OPPOSITION TO DEBTOR'S MOTION FOR ORDER ESTABLISHING
DEADLINES FOR FILING PROOFS OF CLAIM AND APPROVING FORM AND
MANNER OF NOTICE THEREOF**

The Archdiocese of Milwaukee, Debtor and Debtor-in-Possession ("Debtor" or "Archdiocese"), hereby submits this response (the "Response") to the Opposition of the Official Committee of Unsecured Creditors to Debtor's Motion for an Order Establishing Deadlines for Filing Proofs of Claim and Approving Form and Manner of Notice Thereof and states as follows:

Background

1. On May 6, 2011, the Debtor filed its bar date motion which moved the Court to (i) establish deadlines for filing proofs of claim (the "Bar Dates"); (ii) approve the proposed Proof of Claim Forms; (iii) approve procedures for maintaining the confidentiality of proofs of claim filed by abuse survivors (the "Abuse Survivors");¹ (iv) approve the form and manner of the

¹ The Debtor, in an effort to refer to individuals who have been abused in a respectful and consistent way, has historically used the term "Victims/Survivors," a phrase which was originally suggested by the Survivors Network of those Abused by Priests ("SNAP"). As requested in the Opposition, on all future pleadings and notices in this case, including this Response and notices and forms relating to the establishment of the Bar Dates, the Debtor will instead use the term "Abuse Survivors."

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proposed notices of the Bar Dates as providing fair, reasonable and adequate notice of the Bar Dates; and (v) grant related relief. [Docket No. 211] (the "Bar Date Motion").²

2. On May 20, 2011, the Official Committee of Unsecured Creditors (the "Committee") filed its opposition to the Bar Date Motion [Docket No. 241] (the "Opposition"), which among other things, (i) requests Abuse Survivors be provided a full year from the entry of a bar date order to file a proof of claim, (ii) wants the Debtor's limited resources to vastly expand the potential pool of individuals to whom the Debtor must provide the Abuse Survivors Bar Date Package without any concomitant benefit, and (iii) substantiates an ill-conceived publication and publicity campaign for the Debtor's proposed Publication Protocol in a transparent effort to generate claims which are likely time-barred.

3. This Response addresses the Committee's most significant and most objectionable positions. The Debtor has a conference call scheduled for June 16, 2011 (the "June 16 Conference"), with David Asbach of the U.S. Trustee's Office and Committee counsel so that the parties can attempt to resolve some of their disagreements. Attached hereto as Exhibit A is a chart which details the numerous objections the Committee has raised to the Bar Date Motion. After the June 16 Conference the Debtor intends to amend Exhibit A to reflect areas the Debtor believes it and the Committee have reached agreement and those issues where the parties still disagree.

Foundational Considerations

4. The Bar Date notice proposed by the Debtor complies with due process by providing personal notice to all known Abuse Survivors and a broad based publicity campaign which includes advertisements announcing the Abuse Survivor Bar Date in more than twenty

² Capitalized terms not defined herein shall have the same meaning ascribed to them in the Bar Date Motion.

local, regional, and national publications (some of which are in Spanish and Hmong), wide dissemination of Publication Notices and the list of Abusers, including to individuals that are alumni of Schools in the Region, a letter in parish bulletins from the Archbishop announcing the Abuse Survivor Bar Date, website postings, and press releases to inform unknown Abuse Survivors of the Abuse Survivor Bar Date.³

5. The Committee, apparently acting under the misguided belief that more notice is always better, advocates for an Abuse Survivor Bar Date that is more than a year away and a notice and publicity campaign surrounding the Abuse Survivor Bar Date that is significantly more burdensome than anything ever undertaken by a diocesan debtor.

6. The Debtor has significant concerns that the notice protocols advocated for by the Committee would re-victimize Abuse Survivors. This will occur if Abuse Survivors are encouraged to file proofs of claim only to have their claims disallowed after the Debtor and/or the Committee – – in keeping with its fiduciary responsibilities – – successfully objects on statute of limitations⁴ or other grounds.

7. Some Abuse Survivors do not want to think about the abuse they suffered and do not wish to participate in this Reorganization Case; however, the Committee proposes to inundate these Abuse Survivors with announcements at the parishes they attend, correspondence in the mail, and announcements in parish bulletins, potentially triggering post traumatic stress disorder or other psychological damage.

8. One group that is particularly vulnerable to re-victimization is the one hundred ninety-two (192) Abuse Survivors who settled their claims against the Archdiocese pre-petition

³ The Debtor will request that Schools provide the Debtor with alumni mailing lists and that Catholic parishes in the Region publish the Archbishop's letter announcing the Abuse Survivor Bar Date. However, as explained in section II below, the Debtor does not have the authority to compel cooperation from these third-parties.

⁴ The Debtor explains why the claims of most Abuse Survivors are time barred in section I below.

(the “Settled Abuse Survivors”). The language the Committee wants added to the Abuse Survivor Proof of Claim Form and Abuse Survivor Bar Date Notice [*Opp’n* at page 8] in essence encourages Settled Abuse Survivors to rescind their settlement agreements and/or claim they were fraudulently induced to enter into their settlement agreements.

9. The Debtor entered into settlements with the Settled Abuse Survivors to promote healing and as an extension of its ministries; however, the Debtor does not believe it had any legal obligation to compensate the Settled Abuse Survivors because the statute of limitations had tolled on their claims. If the Committee is successful in convincing Settled Abuse Survivors to rescind their agreements with the Debtor, the likely result is that the Settled Abuse Survivors would be compelled to return to the Debtor all settlement payments they have received to-date, only to have their proofs of claim disallowed on statute of limitations or other grounds. This would be devastating to the Abuse Survivors.

10. The dangerous scope of the Committee's notice proposals cannot be over-emphasized. The Committee admits that its proposals are designed to stir repressed memories⁵ and get the Abuse Survivors to relive their traumas that may have been resolved through counseling or the psychological protections that forgetting and forgiveness may achieve. The Committee disregards the psychological impact of its position while the Committee continues to seek additional claims that the Committee, as well as the Debtor, will have a duty to contest based on their legal unenforceability under Wisconsin law. While the Debtor has continued to provide therapeutic and financial assistance to Abuse Survivors through its voluntary Mediation Program as part of its pastoral mission, it has not found a legal theory that would allow it to pay

⁵ The Committee contends that “specific descriptions of acts of abuse” must be listed on the Publication Notice in order to encourage Abuse Survivors to process that they were abused and file a proof of claim. *See Opp’n* at page 18.

legally time barred claims of Abuse Survivors to the exclusion of payments for enforceable claims.⁶

11. A balance must be reached in this Reorganization Case; while it is critically important that the notice of the Bar Date is sufficient to comply with due process, and that is why the Debtor's Bar Date Motion provides for a robust noticing campaign, it is equally important that notice is provided without causing unnecessary harm to Abuse Survivors, to survivors of sexual abuse initiated by persons not in any way connected to the Archdiocese (e.g. a family member), and to other community members, including children, who may not know how to properly deal with the number and type of communications advocated for by the Committee in the Opposition. We cannot begin to comprehend the potential harm to children and families from the type of weekly, graphic announcements suggested by the Committee.

12. Underlying the Committee's Opposition are two foundational issues with which the Debtor objects: (i) that there are likely hundreds of Abuse Survivors that have legally actionable claims against the Debtor [*Opp'n* at page 1] and (ii) that the Debtor has legal responsibility for third-parties in the Region that adhere to the Catholic faith (e.g. parishes, Schools, etc.) and that the Debtor can and should be compelled to force these third-parties to make statements, conduct file reviews for purposes of identifying potential Abuse Survivors, and otherwise participate in this Reorganization Case. *Opp'n* at pages 11-18.

I. The Number of Abuse Survivors with Actionable Legal Claims in the Debtor's Bankruptcy is Likely Small

13. Other than the seventeen (17) plaintiffs with lawsuits pending against the Debtor as of the Petition Date,⁷ the Debtor is unaware of any other Abuse Survivors who have claims

⁶ The Debtor's Schedules in this case show claims in excess of \$19 million.

⁷ The Debtor does not concede that these claims are not time barred but does recognize that litigation was commenced several years ago.

against the Debtor that are not clearly time-barred. While the Archdiocese has received no detail about specific claims related to clergy sexual abuse that will be at issue in the bankruptcy proceedings, it expects proofs of claim to be submitted for abuse that took place, in most cases, twenty (20) years ago or more. Such claims will likely be based on causes of action against the Archdiocese sounding in negligence and fraud; under either cause of action the claims are time barred.

14. Negligence claims, such as a claim that the Archdiocese negligently supervised a clergy member, have a three-year limitations period. *See* Wis. Stat. § 893.54(1). As a matter of law, the statute of limitations begins to run on such claims by the date of the last incident of abuse. *John Doe 1 v. Archdiocese of Milwaukee*, 2007 WI 95, ¶ 36, 734 N.W.2d 827. Negligence claims, often involving abuse that took place 20 years ago or more, would plainly be barred under § 893.54(1).

15. Most, if not all, of the fraud claims that will be brought are similarly time barred. Fraud claims, such as a claim that the Archdiocese fraudulently represented that it did not know about a clergy member's history of sexual abuse, have a six-year limitations period. *See* Wis. Stat. § 893.93(1)(b). A cause of action for fraud accrues when "the facts constituting the fraud can be effectually discovered upon diligent inquiry." *Milwaukee W. Bank v. Lienemann*, 15 Wis. 2d 61, 64, 112 N.W.2d 190 (1961); *see also John Doe 1*, 2007 WI 95, ¶ 51 ("Actual and complete knowledge of the fraud . . . is not necessary. . . . [w]hat is required is that [plaintiff] be in possession of such essential facts as will, if diligently investigated, disclose the fraud.") Again, given the lengthy period of time between the majority of instances of abuse and now, the Archdiocese anticipates that most, if not all, the fraud claims will also be barred under § 893.93(1)(b).

16. Furthermore, the Wisconsin Supreme Court has ruled that there is no exception to the tolling of statute of limitations for Abuse Survivors who suffer from repressed memory. *BBB Doe v. Archdiocese of Milwaukee*, 211 Wis.2d 312, ¶93, 565 N.W.2d 94 (Wis. 1997) (ruling that “a claim of repressed memory of past sexual abuse does not delay the accrual of a cause of action for non-incestuous sexual assault, regardless of the victim’s minority and the position of trust occupied by the alleged perpetrator.”)

II. The Committee Grossly Misrepresents the Debtor’s Relationship with Certain Third-Parties

17. Without providing any legal support, the Opposition claims that the Debtor may have responsibility for abuse committed by individuals who were employed or associated with all organizations in the Region with a Catholic mission, what the Committee refers to as the “Catholic Entities”⁸ (i.e. Catholic schools, day care centers, hospitals, charities, universities, Catholic religious orders located within the territorial limits of the Archdiocese, etc.). *Opp’n* at page 4. Although the Debtor provides certain ecclesiastical services and pastoral care to some of the so called “Catholic Entities,” the Committee has provided no evidence, because none exists, that the Debtor has legal responsibility for the “Catholic Entities.” It is simply improper to encourage individuals who have been abused by parties unrelated to this Reorganization Case to file proofs of claim only to have their claims summarily dismissed as claims against non-debtor third-parties.

18. The Committee spends more than one third of its Opposition arguing that the Debtor has sufficient control over the “Catholic Entities” so that it can force those entities to participate in the most burdensome of ways in the Reorganization Case. *Opp’n* at page 11-18 (Debtor must contact each “Parish”, “School” and other “Catholic Entity” and have them review

⁸ Capitalized terms herein set off by quotation marks are defined terms used by the Committee in the Opposition, and shall have the same meaning herein as ascribed to them in the Opposition.

their files for any records of the identity of a potential Abuse Survivor and to consider whether they otherwise have knowledge of the identity of a potential Abuse Survivor; Debtor shall provide the Publication Notice to all parishes and schools in the Region [as suggested by the Debtor in the Bar Date Motion]; the “Debtor or someone at the parish or school at the request of the Debtor shall verify that the Publication Notice remains posted until the end of the Publication Period”; the Archbishop shall ask each parish to include a letter in its parish bulletin announcing the bar date “once a week for every week of the Publication Period,” or approximately forty-seven [47] times per parish; and Debtor will post the Publication Notice on the homepage of each parish and “School’s” website).

19. Additionally, the Committee proposes that the Debtor compel a priest in each church in the Region to “announce the Abuse Survivor Bar Date and the procedure for filing an Abuse Survivor Proof of Claim from the pulpit one time during each Sunday mass conducted during the Publication Period.” *Opp’n* at page 16-17. This would amount to approximately forty-seven (47) weekly announcements from the pulpit at each of the two hundred ten (210) Catholic parishes in the Region, or, depending on how many masses each church conducts on Sunday, approximately nine thousand eight hundred seventy (9,870) to twenty-nine thousand six hundred ten (29,610) Court ordered priest announcements from the pulpit.

20. Contrary to the Committee’s assertions, the Debtor does not “exert[] an extraordinary amount of control over the parishes.” *Opp’n* at page 13. Catholic Parishes in the Region are organized and operate as independently incorporated religious organizations pursuant to Wis. Stat. § 187.19 and have since 1883. The other “Catholic Entities” are also legally distinct from the Debtor.

21. The Committee holds out the 2011 Catholic Stewardship Appeal (the “CSA”) as an example of the Debtor’s ability to control the conduct of priests and Catholic parishes in the Region. *Opp’n* at pages 17-18. However, even though the CSA is the most important fundraiser for the Archdiocese, the Debtor cannot force parishes to present CSA publicity materials or present them in a unified manner and CSA discussions at parishes vary to a large degree.

22. The Debtor and the Court simply do not have the legal authority to compel independent third-parties, including the Catholic parishes in the Region, to participate in this Reorganization Case. The Committee basically concedes as much [*Opp’n* at page 13], yet intimates the Archbishop should use his Canonical authority to appoint and remove pastors, approve assignment of priests, and veto certain large expenditures, as leverage to force third-parties to comply with the Committee’s proposed Bar Date protocols. *Opp’n* at pages 13-15. The Archbishop simply does not and, in keeping with Canon Law, cannot, yield his authority in such a fashion.

23. Essentially, the Committee seeks to have this Court order what parishes and priests, who are not subject to this Court's jurisdiction, must say and describe during church services. The Committee cites no authority for the proposition that a bankruptcy court has the jurisdiction or constitutional authority to direct or supervise the internal affairs of a church since no such authority exists. Put simply, the Committee's demand to compel actions from non-debtor entities with Catholic faith based missions in the Region violates these “Catholic Entities” constitutional rights. *See* U.S. CONST. amend. I; *see also* RELIGIOUS FREEDOM RESTORATION ACT OF 1993, Pub. L. No. 103-141, 107 Stat. 1488 (Nov. 16, 1993).

24. Mindful of its limited ability to force third parties to participate in the Reorganization Case, but intent on providing meaningful notice of the Bar Date, the Debtor in its Bar Date Motion proposes a Publication Protocol which includes:

- a. Archbishop Jerome ListECKI preparing a letter notifying Catholics in the Region of the Bar Dates and requesting that each parish in the Region publish the letter at least once in its parish bulletin;
- b. the Debtor requesting from Schools [as defined in the Bar Date Motion] in the Region current alumni mailing lists, if any exist, and sending Publication Notice and the list of Abusers to any individual that appears on lists provided by a School; and
- c. the Debtor providing a copy of the Publication Notice to all Schools and parishes in the Region and requesting that the Schools and parishes post the Publication Notice in a prominent location for at least six weeks.

Bar Date Mot. ¶ 38(iv)(a), (b), and (e). The Debtor includes such outreach to non-debtors in its Publication Protocol, though not required to do so by the Bankruptcy Code, because it believes it is the right thing to do. However, the Committee is intent on treating all entities with Catholic religious beliefs operating in the Region as if they are debtors in this Reorganization Case and holding the Debtor responsible for their compliance with the onerous tasks detailed in paragraphs eighteen (18) and nineteen (19) above. There is no legal basis for this treatment of the Debtor or the non-debtors.

Debtor's Positions on Specific Committee Objections

25. The Committee, which is fond of citing to other diocesan bankruptcies when it suits its purposes, in its Opposition asks for a notice period and publicity campaign that far exceeds what has been ordered in any other diocesan bankruptcy.

III. The Debtor Proposed An Appropriate Bar Date for Abuse Survivors Claims

26. The Committee claims that a September 15, 2011, Bar Date for Abuse Survivors is “terribly inadequate under the circumstances.” *Opp'n* at page 5. This is a stunning claim

given that Committee counsel must be aware that on behalf of the official committee of unsecured creditors in Wilmington they agreed to an Abuse Survivor bar date that was approximately seventy-three (73) days after the entry of a bar date order, and less than half a year after petition date.⁹ Furthermore, in the five diocesan bankruptcies in which a reorganization plan has been confirmed, the average length of time between the entry of a bar date order and the bar date for Abuse Survivors was one hundred thirty-seven (137) days.¹⁰

⁹ *In re Catholic Diocese of Wilmington, Inc.*, Order Pursuant to Bankruptcy Rule 3003(c)(3) and Local Rule 2002-1(e) Establishing Deadlines for Filing Proofs of Claim and Approving Form and Manner of Notice Thereof, No. 09-13560 (CSS), ECF No. 308 (Bankr. D. Del. Feb. 1, 2010).

¹⁰ *See In re Diocese of Davenport*, Order Granting Joint Mot. of Debtor and Official Committee of Unsecured Creditors for an Order: (1) Vacating Existing Bar Date for Filing Proofs of Claim, (2) Fixing New Bar Date for the Filing of Proofs of Claim; (3) Fixing Bar Date for the Filing of Proofs of Claim by Governmental Units, (4) Fixing Bar Date for the Filing of Requests for Allowance of Bankruptcy Code § 503(b)(9) Administrative Expense Claims, (5) Designating Form and Manner of Notice Thereof, (6) Approving Form of Proof of Claim for Claims Arising from Sexual Abuse, (7) Approving Procedure for Maintaining Confidentiality of Proof of Claims and Protocol for Handling Confidential Proof of Claim for Sexual Abuse, and (8) Granting Related Relief, No. 06-02229-lmj11, ECF No. 97 (Bankr. S.D. Iowa March 16, 2007); *In re Roman Catholic Archbishop of Portland in Or.*, Order (1) Fixing a Bar Date for Filing Proofs of Claim and (2) Approving a Proof of Claim Form, Bar Date Notices, Actual Notice Procedure, and Mailing and Media Notice Program, No. 04-37154-elpl11, ECF No. 755 (Bankr. D. Or. Jan. 3, 2005); *In re Catholic Bishop of Spokane*, Order 1) Fixing Bar Date for Filing Proofs of Claim; 2) Approving Proof of Claim and Bar Date Notice Forms; and 3) Approving Notice Procedures, No. 04-08822-PCW11, ECF No. 883 (Bankr. E.D. Wash. Nov. 30, 2005); *In re the Roman Catholic Church of the Diocese of Tucson*, No. 4-04-bk-04721-JMM, ECF No. 118 (Bankr. D. Ariz. Nov. 5, 2004); *Catholic Bishop of N. Alaska*, Order Granting Debtor's Mot. for an Order Fixing Time for Filing Proofs of Claim; Approving Claim Forms; and Approving Manner and Form of Notice, No. F08-00110-DMD, ECF No. 180 (Bankr. Alaska May 30, 2008).

27. There is widespread knowledge of this Reorganization Case and the abuse that caused the Debtor to seek protection pursuant to Chapter 11 of the Bankruptcy Code: (i) in July of 2004 the Archdiocese became one of the first diocese to publicly provide the names of diocesan priests against whom there were credible allegations of abuse; (ii) the Mediation Program instituted by the Debtor, also in 2004, was announced with an unprecedented and extensive public awareness campaign; (iii) this Reorganization Case has garnered a significant amount of local, regional, and national publicity; and (iv) Attorney Jeff Anderson has conducted his own publicity campaign, including television advertisements and a March 3, 2011 press conference at the Pfister Hotel to recruit Abuse Survivors to become his clients and participate in the Reorganization Case. Especially given the extensive nature of the Debtor's proposed Publication Protocol, there is simply no reason why September 15, 2011, the Debtor's proposed Abuse Survivor Bar Date, is not a proper Abuse Survivor Bar Date for this Reorganization Case. However, given the delays in getting the Abuse Survivor Bar Date Notice Package served caused by the Committee's objection, the Debtor proposes to set October 14, 2011, as the Abuse Survivor Bar Date.

IV. Only Modest Changes to the Abuse Survivor Proof of Claim Form are Proper

28. The Debtor attempted to create an Abuse Survivor Proof of Claim Form that is easy for Abuse Survivors to understand and fill out, while providing the Debtor with sufficient information to evaluate Abuse Survivors' claims. The Debtor has no objection to changes aimed at making the form more "accessible," like certain of the changes offered by the Committee.

29. However, for the Abuse Survivor Proof of Claim Form to serve its purpose, Abuse Survivors must quantify the value of their claims and provide information or documentation related to their claims. Mindful of the fact that it will be difficult for Abuse

Survivors to value their claims and quantify their injuries, the proposed Abuse Survivor Proof of Claim Form allows Abuse Survivors to leave those sections unanswered, and complete them only after the Debtor makes a written request for additional information. *Bar Date Mot.* at Ex. B.

30. The Committee's suggestion that it is improper to ask for such information from Abuse Survivors is not only incredibly paternalistic (some Abuse Survivors may want the opportunity to inform the Debtor of the extent of their injuries), but it threatens to unnecessarily prolong this Reorganization Case and reduce the recovery for all creditors. Until the Debtor is able to determine the number and value of claims against it, the Debtor will be in no position to propose a reorganization plan.

31. The Committee also objects to the treatment of Settled Abuse Survivors in the Abuse Survivor Bar Date Notice. The Opposition states that "[T]he Committee believes that Settling Abuse Survivors may have the right to rescind their settlement agreements or affirm their settlement agreements and seek damages against the Debtor if they were fraudulently induced to enter into the settlement." *Opp'n* at page 8.

32. The Committee, notwithstanding the fact that its taking of this position may harm many of the unsecured creditors it purports to represent,¹¹ argues that the Abuse Survivor Bar Date Notice should be amended to include arguments that could be used by Settled Abuse Survivors in an attempt to rescind their Settlements or to seek damages for "Fraudulent Inducement Claims." *Opposition* at page 8.

¹¹ The Debtor is compelled to note that the Committee's decision to advocate for certain unsecured creditors at the expense of others in the unsecured creditor class is a breach of its fiduciary duty. *In re Drexel Burnham Lambert Grp. Inc.*, 138 B.R. 717, 722 (Bankr. S.D.N.Y. 1992) (committee counsel may not maximize the recovery of certain members of the class to the detriment of other class members).

33. To encourage Settled Abuse Survivors to challenge their Settlements, the Committee also objects to Settled Abuse Survivors being listed as exempt from needing to file proofs of claim [*Opp'n* at page 8], even though the Abuse Survivor Bar Date Notice only exempts from filing a proof of claim a Settled Abuse Survivor whose “only claim is for the unpaid amount stated in the settlement agreement.” *Bar Date Mot.* at Ex. D.

34. As more fully explained in paragraphs six (6) through eleven (11) above, the most likely result if these modifications to the Abuse Survivor Proof of Claim are ordered is that Settled Abuse Survivors will be re-victimized. The Committee’s proposed changes to the Abuse Survivor Bar Date Notice are misguided and will harm Settled Abuse Survivors and provide no benefit to the Debtor, or its creditors.

V. The Debtor’s Proposed Notice to Known Abuse Survivors is Proper

35. The Bar Date Motion provides that notice of the Abuse Survivor Bar Date will be provided to (i) Abuse Survivors that entered into settlement agreements with the Debtor, (ii) Abuse Survivors that are represented by counsel, and (iii) the two unrepresented Abuse Survivors (the “Does”) whom the Court determined at the June 1, 2011, hearing could participate in the Mediation Program. *See Bar Date Mot.* ¶ 33.

36. Additionally, the Bar Date Motion envisions that the Abuse Survivor Notice Package will be served on all individuals whom the Chancellor of the Archdiocese or the Archdiocese’s Victim Assistance Coordinator (the Debtor’s two employees most familiar with the identity of Abuse Survivors) know of that have alleged they are Abuse Survivors, received payment from the Debtor as a result of an allegation of abuse, participated in the Mediation Program but did not reach a settlement, or have been provided counseling, spiritual direction, or therapy support related to abuse. *Bar Date Mot.* ¶ 34.

37. The Opposition claims this is wholly inadequate, and seemingly would impute knowledge of the identity of an Abuse Survivor to the Archdiocese should any employee of the Debtor or a non-Debtor “Catholic Entity” (such as a hospital or University) have such knowledge (or at one time have possessed such knowledge), and would require third-parties to conduct incredibly burdensome reviews of decades worth of files. *Opp’n* at pages 11-13.

38. The Debtor is willing, as the Committee requests, to review any files that exist and are in its possession of the “Sexual Abuse Prevention & Response [Services] Office”, the “Victims Assistance [Coordinator]”, the “Eisenberg Commission” and “Project Benjamin”¹² that may contain the names of Abuse Survivors and to the extent that review uncovers the names of previously unknown Abuse Survivors, the Debtor will make a good faith effort to obtain those individuals addresses and provide those Abuse Survivors with the Abuse Survivor Bar Date Notice Package.

39. Furthermore, to the extent any officers of the Debtor are aware of the identities of additional Abuse Survivors, the Debtor will make a good faith effort to obtain those individuals addresses and provide those Abuse Survivors with the Abuse Survivor Bar Date Notice Package.

40. However, the Debtor cannot be deemed to have knowledge of the identity of any Abuse Survivors whose identities are not uncovered by the discovery detailed in paragraph thirty-eight (38) above or known to the Debtor’s officers, the Chancellor of the Archdiocese, or the Victim Assistance Coordinator. Nor, as detailed in paragraphs 17-24 above, does the Debtor or the Court have the authority to demand a review of files be undertaken by third-parties such as the “Catholic Entities” referenced by the Committee.

¹² The other boards the Committee suggests at page 12 of the Opposition should be reviewed either do not exist or have nothing to do with abuse claims.

VI. Service of The Abuse Survivor Bar Date Packages Should Be Accomplished Using the Same Protocol as Approved By The Court at the June 1, 2011, Confidentiality Procedures Hearing

41. The Debtor filed its Bar Date Motion prior to the June 1, 2011, Confidentiality Procedures Hearing (the "Confidentiality Hearing"). Although an Order establishing a confidentiality protocol for this Reorganization Case has not yet been entered, it was determined at the Confidentiality Hearing that the Debtor may send any Abuse Survivor notices directly to Abuse Survivors, unless the Debtor knows the Abuse Survivor is represented by counsel, in which case the Debtor may serve the Abuse Survivor's counsel instead of serving the Abuse Survivor directly. After effectuating such service the Debtor is to file a certificate of service and file under seal a list of the Abuse Survivors whom were served.

42. In the Bar Date Motion the Debtor moved the Court that service of the Abuse Survivor Bar Date Package be accomplished in the same fashion as that approved by any special confidentiality order issued in this Reorganization Case. Therefore, the Debtor believes it should serve the Abuse Survivor Notice Package using the same procedures as detailed in the preceding paragraph.

VII. Claims Should be Processed Without the Necessity of a Claims Agent

43. The Bar Date Motion proposes that all Abuse Survivor claims be sent directly to Debtor's counsel who will then provide copies of any proofs of claim to Committee counsel and the other Permitted Parties after each Permitted Party executes and returns to Debtor's counsel a Confidentiality Agreement. The Debtor believes this approach, as opposed to the hiring of an outside claims agent, will reduce the likelihood of confidential Abuse Survivor information becoming publicly available and is the most efficient.

44. However, to the extent the Court does not believe it will be unduly burdensome to the Court, the Debtor would not object to proofs of claim being filed with the Court under Seal, with access to Abuse Survivor proofs of claim restricted to the Permitted Parties.

VIII. The Proposed Language in The Bar Date Order Regarding the Affect of Failure to File a Claim is Customary and Appropriate

45. The Committee objects to the language in the proposed Bar Date Order that provides that a holder of a claim that is not exempted from needing to file a proof of claim and who fails to timely file a proof of claim will be barred from i) asserting such claim against the Debtor, ii) voting on any reorganization plan, and iii) participating in any distributions in the Reorganization Case on account of such claim. *Opp'n* at page 19.

46. This language or language with similar meaning commonly appears in bar date orders, including those of the other diocesan Debtors that have confirmed plans of reorganization.¹³ Such language is important because it puts creditors on notice that failure to file a claim can have significant consequences. Failure to have such language in the Bar Date Order and notices to general creditors and Abuse Survivors could cause great harm to such creditors who may fail to timely file a claim out of the mistaken impression that the Bar Date established by this Court is not a firm deadline.

IX. The Confidentiality Agreement Protects Abuse Survivors From Public Disclosure of Their Identities

47. The Confidentiality Agreement, attached as Exhibit G to the Bar Date Motion, is intended to protect Abuse Survivors from having their identities publicly disclosed or having their proofs of claim used for purposes unrelated to this Reorganization Case. Nothing contained

¹³ See footnote ten (10) for citations to the bar date orders of the diocesan debtors that have confirmed reorganization plans.

in the Confidentiality Agreement prevents an Abuse Survivor from publicly identifying him or herself or publicly producing his or her completed proof of claim form.

48. The Opposition criticizes the Confidentiality Agreement because it i) prevents Permitted Parties from using the information contained in the confidential proofs of claim for personal benefit or for any purposes unrelated to this Reorganization Case, ii) grants the Debtor certain enforcement rights should a Permitted Party breach the Confidentiality Agreement, and iii) requires a Permitted Party to notify the Debtor and to assist the Debtor and its counsel in preventing the disclosure of Confidential Information. *Opp'n* at page 6-7.

49. These provisions are a HIPAA construct, intended to prevent disclosure of Confidential Information and the use of Confidential Information for personal gain. The Confidentiality Agreement provides the Debtor with certain enforcement rights because the Debtor is likely in the best position to enforce compliance with the Confidentiality Agreement.

50. However, the Debtor never intended that it be granted enforcement rights that exceed those of the Abuse Survivors whom the Confidentiality Agreement is designed to protect. The Debtor has attached as Exhibit B hereto a revised Confidentiality Agreement which makes clear that Abuse Survivors can individually enforce the Confidentiality Agreement in the event the Confidentiality Agreement is breached.

WHEREFORE, the Debtor respectfully request that the Court grant the relief sought in the Bar Date Motion as modified herein and grant any additional relief it deems proper.

Dated this 15th day of June, 2011.

ARCHDIOCESE OF MILWAUKEE
Debtor and Debtor-in-Possession
by its counsel,
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EXHIBIT A

Revisions Requested by the Committee	Debtor	Debtor	Debtor	Explanation
	does not object	objects	Accepts But Modifies	

Definitions/Terminology				
Change all references to "Victim/Survivors" to "Abuse Survivors."				
Additional or New Definitions				
Abuse				
Abuse Survivor				
Alleged Perpetrator				
Catholic Entity				

Bar Dates				
General Bar Date - Aug. 1, 2011 4:00pm (clarifies time, does not change date)				
Abuse Survivors - one year after the entry of the Order.				
Who Must File Proofs of Claim				
Settling Abuse Survivors who believe they have Fraudulent Inducement Claims must file proofs of claim.				

Persons who are not required to file a proof of claim				
Omits provision exempting individuals who properly filed proofs of claim prior to the Order containing substantially all of the information required from the need to file a new proof of claim				
Omits provision exempting Abuse Survivors only making a claim for amounts due on Settlement Agreements from the need to file a new proof of claim				
Added provision that Settling Abuse Survivors should file claims if they believe they have Fraudulent Inducement claims.				

Filing of General Creditor Proof of Claim Forms				
In addition to filing General Creditor Proof of Claim with the Court and the Debtor c/o WHD, the General Creditor Proofs of Claim should also be filed with a Claim Agent.				

Contents of Submitted Abuse Survivor Proof of Claim Form				
Non-substantive changes to make the form more user friendly.				
Adds contact information for the counsel for the Committee.				
Omits statement regarding penalty for filing a fraudulent claims.				
Omits requirement that Abuse Survivors include an amount for the claim.				
Omits the requirement that Abuse Survivors attach any writings upon which the claim is based.				

	Debtor does not object	Debtor objects	Debtor Accepts But Modifies	Explanation
Revisions Requested by the Committee				

Publication Notice Requirements				
Needs to be larger				
Needs to:				
1. notify the reader that, among other things, a list of names, dates, locations, and years of service of the Substantiated Abusers is available.				
2. the name of the church, parish, School, or other Catholic Entity for which the Substantiated Abuse worked or served.				
3. include specific descriptions of acts of abuse.				

Abuse Survivor Notice Parties				
Instead of the Publication Notice, the Debtor must serve Abuse Survivor Notice Packages.				
Abuse Survivor Notice Parties				
1. parties known to the Archdiocese that have contacted the Archdiocese or any Catholic Entity to report that they were victims of Abuse.				
2. individuals known to the Archdiocese to whom payment has been made by or on behalf of the Archdiocese or any Catholic Entity because of an allegation of Abuse, including but not limited to Settling Abuse Survivors and individuals who participated in any mediation/settlement but did not settle.				
3. individuals whose names were given to the Archdiocese or to any Catholic Entity by an Alleged Perpetrator or any third party during interviews, counseling sessions, or as part of an investigation of Abuse.				
4. individuals who attended a School in the Archdiocese during the years in which an Alleged Perpetrator was at the school.				
5. individuals identified on the latest School alumni mailing lists				
6. registered Catholics in every parish in the Archdiocese during the years an Alleged perpetrator was at the parish.				
6. individuals known to the Archdiocese who attended or participated in any other Catholic Entity during the years an Alleged Perpetrator was present at Catholic Entity				
7. individuals who contacted the Archdiocese about their children being in close contact with or having some problem with an Alleged Perpetrator				
Notice must also be served on an attorney of record for any of Abuse Survivor Notice Parties listed above				

Effect of Failure to File Proof of Claim				
Omits provision describing the effect of failing to file a proof of claim form. However, later requires that the proof of claim form explain the effects of failing to file a proof of claim.				

Confidentiality Protocol				
Abuse Survivor Proof of Claim Forms should be sent to Claims Agent, not Debtor.				
The Claims Agent distributes copies to Debtor, Debtor's counsel, Committee's counsel, Permitted Parties upon request.				

Revisions Requested by the Committee

Debtor does not object Debtor Accepts But Modifies Debtor objects Explanation

Revisions Requested by the Committee	Debtor does not object	Debtor Accepts But Modifies	Debtor objects	Explanation
Review of Files				
Debtor will reviews the files in its possession, custody or control related to all Alleged Perpetrators as well as the records of the following:				
1. sexual abuse review boards				
2. Sexual Abuse Prevention & Response Office				
3. Victims Assistance Counselor				
4. Safe Environment Coordinator				
5. Eisenberg Commission				
6. Project Benjamin				
7. Community Advisory Board				
Within 5 days of the Order, Debtor will contact each Parish, School, and other Catholic entity to request names of the Sexual Abuse Notice Parties and each School's alumni mailing list.				
The request will be mailed to each entity on the stationary of the Archbishop as a personal request from him.				
Debtor will file a declaration attesting to its efforts to comply with these procedures with the Court and the Committee within thirty days of mailing the Abuse Survivor Bar Date Packages.				
Debtor will provide counsel to the Committee with names and addresses of all Abuse Survivor Notice Parties and all Alleged Perpetrators and any subsequently Identified Abuse Survivor Notice Parties and Alleged Perpetrators				
Debtor will serve any newly identified Abuse Survivor within 10 days of learning of their identity.				
Debtor will update the Publication Notice with information regarding any subsequently identified Alleged perpetrator.				

Abuse Survivor Bar Date Notice Contents	Debtor does not object	Debtor Accepts But Modifies	Debtor objects	Explanation
Abuse Survivor Bar Date Notice Contents				
The Notice will include the following information about priests with substantiated claims of abuse:				
1. name of each Substantiated Abuser including two individuals not on Debtor's Abuser List				
2. name of the church, parish, School, or other Catholic Entity for which the Substantiated Abuser worked or served;				
3. Substantiated Abuser's position with said entity;				
4. Substantiated Abuser's dates of service or employment with such entity;				
5. picture of at least 3" by 5" in dimension of each Substantiated Abuser at or close to the time of Abuse.				
Adds contact information for counsel to the Committee.				
Includes a list of all the Parishes and Catholic Schools within the diocese that have operated between 1950 and 2011.				
Added language that Substantiated Abusers include but are not limited to the individuals on the Substantiated Abusers List as well as any others identified during the course of the due diligence efforts required by the Committee.				
Disclaimer: This list is not exhaustive in that there may be additional priests who may have committed acts of abuse but for whom the Archdiocese does not have a report or for whom the Archdiocese determined that an allegation of abuse was not substantive. In addition, the list does not include other potential offenders who are not members of the clergy, such as teachers, nuns or religious order priests). The fact that this list does not include the name of the Alleged Perpetrator who abused you does not mean that you should not file an Abuse Survivor Proof of Claim Form.				

Revisions Requested by the Committee	Debtor	Debtor	Debtor	Explanation
	does not object	objects	Accepts But Modifies	

Publication Procedure - Newspapers				
Agree to publication twice in selected publications, but specified that publication should be once 30 days after entry of the Order and once 30 days before the Abuse Survivor Bar Date.				
Additional publications: (1) American Magazine; (2) Hand to Hand; (3) National Catholic Reporter; (4) Saint Anthony Messenger.				

Publication Procedures - School/Parish Posting				
Publication Notice that is no smaller than 8" by 10" with font no smaller than 10 point provided to all schools and parishes.				
State that it is posted at the request of the Archbishop and is to remain posted within 30 days after the Order is entered through the Abuse Survivor Bar Date.				
Debtor or someone at the parish or school will verify that the Publication Notice remains posted until the end of the Publication Period.				

Publication Procedures - Parish Newsletters				
In addition to preparing the letter to be included in the Parish Newsletters, the Archbishop must sign the letter.				
The Archbishop will request that each parish include said letter in its parish bulletin once a week for every week of the Publication Period. The letter will also be mailed or emailed to registered parishioners.				

Publication Procedure - Websites				
In addition to Debtor's homepage and the KCC website, Debtor will post the Publication Notice on the following websites:				
1. each parish website;				
2. each School website;				
3. on the homepage of each Publication's web-version.				
It will remain posted for the entire Publication Period.				
The Debtor will provide an upload providing the Publication Notice for Abuse Survivors in American Sign Language whenever Debtor publishes the Publication Notice on a website.				

Publication - Toll Free Number				
The Debtor and the Committee will maintain toll free numbers.				

Revisions Requested by the Committee	Debtor	Debtor	Debtor	Explanation
	does not object	objects	Accepts But Modifies	

Publication Procedure - Press Release/Announcements				
Press Release will announce the Abuse Survivor Bar Date and will be provided to , at a minimum all entities receiving notice of the Debtor's Mediation Program in 2004.				
Priest in each church will announce the Abuse Survivor Bar Date and the procedure for filing an Abuse Survivor Proof of Claim from the pulpit one time during each Sunday mass conducted during the Publication Periods.				

Additional Notice Parties				
Must mail notice to all licensed therapists who work with survivors of sexual abuse, as opposed to all licensed therapists known to the Debtor.				

Certificate of Compliance with Notification Procedures				
Must be filed with the court and served on counsel to the Committee within 30 days of service of the Abuse Survivor Bar Date Packages.				
Debtor must also file with the Court and serve on the counsel to the Committee a declaration attesting to the compliance of the parishes, schools, and other Catholic Entities.				

Confidentiality Agreement				
Omits provision regarding the individual's agreement to only use the Confidential Information to assist him or her in performing functions in the Bankruptcy Case and that the information cannot be used for other purposes.				
An individual must notify the holder of the claim, Counsel to the Committee, and Counsel to the Debtor in the event the person is subpoenaed or required to give testimony regarding Confidential Information within three days of receiving the request.				
The continuing and permanent obligation of the Confidentiality Agreements continues until further order of the Court.				
Omits provision regarding Debtor's rights to compel specific performance or seek injunctive relief in the event of a breach.				
Adds provision that Confidentiality Agreement is for the sole and exclusive benefit of the Abuse Survivors who file Abuse Survivor Proof of Claim Forms.				
Provides for disclosure of Confidential Information if the signatory obtains prior written consent of the claim holder or obtains a court order.				
Explicitly provides that breach of the Confidentiality Agreement can give rise to recourse by the holder of the claim or by the person whose Confidential Information is disclosed.				

EXHIBIT B

CONFIDENTIALITY AGREEMENT

I, _____, state the following:

1. I am aware that pursuant to the order of the United States Bankruptcy Court for the Eastern District Court of Wisconsin in case No. 11-20059 (the "Bankruptcy Case") [Docket No. ____], I cannot have access to any Abuse Survivor Proofs of Claims and information contained therein unless I enter into this Confidentiality Agreement (a "Confidentiality Agreement").

2. I understand that the information contained on the Abuse Survivor Proofs of Claim, including but not limited to the names and other personal identification information of an Abuse Survivor or alleged abuser, is confidential (the "Confidential Information") and I will not provide any Abuse Survivor Proofs of Claim forms to any individual, or share any Confidential Information, with any individual that has not entered into a Confidentiality Agreement concerning the Abuse Survivor Proofs of Claim.

3. I shall use or cause the Confidential Information only to assist me in performing my functions in the Bankruptcy Case and in a manner consistent with the terms and conditions of this Confidentiality Agreement. At no time shall I use the Confidential Information for the benefit of myself or any other third person. Nor shall I use the Confidential Information for any other purpose or proceeding, including but not limited to, any other legal proceedings of any nature, for purposes of evaluation or compiling demographic or statistical information about victim abuse claims against the Archdiocese or any other organization, or for purposes of evaluating or compiling demographic or statistical information about victim abuse claim settlements paid by the Archdiocese or any other organization.

4. In the event that I am subpoenaed or otherwise required to give testimony regarding any Confidential Information, I agree to immediately notify the affected Abuse Survivors and the Archdiocese, through its counsel, and to assist the affected Abuse Survivors and the Archdiocese and its counsel in preventing the disclosure of any Confidential Information. The notice required by this section shall be provided to the affected Abuse Survivors and:

Daryl L. Diesing, Bruce G. Arnold and Michael E. Gosman
Whyte Hirschboeck Dudek S.C.
555 East Wells Street, Suite 1900
Milwaukee, WI 53202
414-978-5523
ddiesing@whdlaw.com
barnold@whdlaw.com
mgosman@whdlaw.com

5. This Confidentiality Agreement creates a continuing and permanent obligation to maintain confidentiality and shall not terminate at the conclusion of the Bankruptcy Case.

6. In the event I breach this Confidentiality Agreement, the Affected Abuse Survivors and the Archdiocese shall be entitled, in addition to whatever other remedies are or might be available at law or in equity, to compel specific performance by me or to obtain injunctive relief preventing any further breach, including, without limitation, immediate return of all Confidential Information, and including all reasonable attorneys fees and costs incurred as a result of any breach, and I shall not oppose such relief.

7. I further understand that any breach of this Confidentiality Agreement may give rise to sanctions for contempt of court, and to separate legal and equitable recourse by the adversely affected party. I further consent to the exercise of personal jurisdiction by the United States Bankruptcy Court for the Eastern District of Wisconsin and waive any objection as to venue in connection with any effort to enforce this Confidentiality Agreement.

I declare under penalty of perjury of the laws of the United States of America that the foregoing is true and correct and that this Confidentiality Agreement is executed on the _____ day of _____, 2011 at _____ in _____.

Signature

Printed Name

Employer